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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

25131

DATE: 12/13/74

STATINTL

TO:



FROM:

Mark Reed

*There will be further changes.
Will call you early Monday.*

OMB FORM 02
REV 4-64

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RETURNED TO THE NEEDLES BY STAFF OF ECONOMIC BRANCH
of the Treasury

- ✓ "(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;"

✓ On page 9, line 15, strike out "(1)" and insert in lieu thereof "(3)".

On page 10, line 1, strike out "(2)" and insert in lieu thereof "(4)".

- ✓ On page 10, line 4, strike out "(2)" and "(5)" and insert in lieu thereof "⁴/₂" and "⁹/₁₁", respectively.

- ✓ On page 11, line 6, strike out "(3)" and insert in lieu thereof "(5)".

- ✓ On page 11, line 11, strike out "(4)" and insert in lieu thereof
"(7)".

- ✓ On page 11, line 20, strike out "(2) (D)" and insert in lieu thereof "(A) (D)".

ITEM 45--AGENCY REQUIREMENT

On page 9, strike out lines 19 through 20 and insert in lieu thereof the following:

✓ "(A) the statutory authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;".

must be exempt

ITEM 49--ACCOUNTING FOR DISCLOSURES

✓ On page 7, line 6, immediately after "years" insert "or the life of the record, whichever is longer,".

ITEMS 46 AND 47--STANDARDS APPLIED TO INFORMATION

On page 11, between lines 10 and 11, insert the following new paragraph:

✓ "(6) prior to disseminating any record about an individual to any person other than an agency, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant;"

✓ On page 11, line 19, strike out "(5)" and insert "(9)".

ITEM 50--INSTRUCTIONS TO EMPLOYEES

On page 11, between lines 24 and 25, insert the following new paragraph:

⑤ "(10) establish rules of conduct and notify and instruct each person involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, of the requirements of this section, including any rules and procedures adopted pursuant to this section and the penalties for noncompliance; and".

This should be (10)

(E)(10) in bill pg. 11

ITEM 51--SAFEGUARDS FOR SECURITY OF INFORMATION

On page 11, between lines 24 and 25, insert the following new paragraph:

⑤ " ⁽¹¹⁾~~(10)~~ establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained."

This should be (11) not (10)

(e) (11) in bill pg. 11

ITEM 58--DISCLOSURES; GAO; LAW ENFORCEMENT

On page 6, line 1, immediately before "law" insert "civil or criminal".

On page 6, line 13, strike out "or".

Ⓐ On page 6, line 14, immediately before the semicolon insert "or to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office".

change to (b)(8)

ITEM 60--RIGHT TO BE ACCOMPANIED

On page 7, line 25, immediately after "permit" insert the following: "the individual or upon request, permit the individual and a person of his own choosing to accompany him".

On page 8, line 2, immediately before the semicolon insert "except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's file in the person's presence".

ITEMS 63 THROUGH 69--ACCESS TO RECORDS

On page 7, line 16, strike out all through line 20, and insert in lieu thereof "if an accounting of the disclosure was made.".

On page 8, line 3, *Section (d)* strike out all through line 19, and insert the following:

"(2) permit the individual to request amendment of a record pertaining to him and--

"(A) not later than 10 days (excluding Saturdays, legal public Sundays, and/holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

"(B) promptly, either--

"(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

"(3) not later than 30 days (excluding Saturdays, legal public Sundays, and/holidays) from the date on which an individual

who disagrees with the refusal of the agency to amend his record review such refusal by the official named in accord-

for good cause shown, the head of the agency extends such 30-day period; and if, after".

On page 8, line 24, immediately before the semicolon insert ", and notify the individual of the provisions for judicial review of that determination under subsection (g) (1) (A) of this section".

On page 9, lines 4 and 5, strike out "and, upon request," and insert a comma.

On page 9, line 12, immediately before the period, insert the following: "or authorize any civil action by reason of any injury sustained as the result of a disclosure of information prior to the effective date of this section".

ITEM 72--NOTICE OF SUBPOENAS

On page 11, between lines 18 and 19, insert the following new paragraph:

"(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;"

ITEM 76--ROUTINE USE

✓ On page 4, line 17, strike out "and".

On page 4, line 23, strike out the period and insert in lieu thereof a semicolon and "and".

✓ On page 4, between lines 23 and 24, insert the following new paragraph:

term is used in (b)(2)
⊛ "(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record or information contained therein for a purpose which is compatible with the purpose for which it was collected."

✓ On page 5, line 8, immediately after "routine use" insert "as defined in subsection (a) (7) of this section. and".

⊛ ✓ On page 5, line 9, strike out "(2)" and insert in lieu thereof "(3)". *Wrong should be (4)*

On page 9, lines 23 and 24, strike out "other purposes for which the information may be used" and insert in lieu thereof: "routine uses which may be made of the information".

On page 10, line 13, strike out all through line 16, and insert in lieu thereof the following:

⊛ "(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;"

ITEM 76 (4)--STATISTICAL RECORDS

On page 4, lines 18 and 19, strike out "statistical research or reporting record" and insert in lieu thereof "statistical record".

On page 18, line 11, strike out "statistical research or reporting records" and insert in lieu thereof "statistical records".

ITEM 76 (7)---LIFESAVING SITUATION

On page 6, line 7, strike out all through line 10,
and insert in lieu thereof the following new paragraph:
(A) "(7) to a person pursuant to a showing of compelling
circumstances affecting the health or safety of an individual
if upon such disclosure notification is transmitted to the
last known address of such individual;".

change to (b)

ITEM 80--RULEMAKING PROCEDURE IN EXEMPTIONS

On page 17, line 11, strike out "(including general notice) of section 553 of this title" and insert in lieu thereof "of notice, publication, and hearing contained in sections 553 (b), (c), and (e), 556, and 557 of this title".

ITEMS 85-87--ARCHIVAL RECORDS

On page 20, line 4, immediately before the period insert:
"except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e) (2) (A)-(G) of this section) shall be published in the Federal Register".

On page 20, line 12, strike out all through line 14, and insert in lieu thereof: "be exempt from the requirements of this section except subsections (e) (2) (A)-(G) and (e) (9) of this section."

ITEM 88--DISCLAIMER/FOI ACT

On page 21, line 18, strike out the quotation marks and the last period.

On page 21, between lines 18 and 19, insert the following new subsection:

"(g) Effect on Other Laws.--No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record or information contained therein which is otherwise accessible to such individual under the provisions of this section. [Nothing in this section shall be deemed to require or permit the withholding of any record or any information contained therein which is permitted to be disclosed under section 552 of this title.]"

NOTE: This language
in process of being changed.)

This should be
a (g)

ITEM--CIVIL REMEDIES

On page 3, line 20, strike out "arbitrary, or capricious" and insert "or intentional".

On page 13, line 10, strike out all through line 24, and insert:

"(g) (1) CIVIL REMEDIES.--Whenever any agency--

"(A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

"(B) refuses to comply with an individual request under subsection (d) (1) of this section;

"(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of records and consequently a determination is made which is adverse to the individual; or

"(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

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jurisdiction in the matters under the provisions of this subsection.

(A)
"(2)/In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed."

✓ On page 13, line 25, strike out "(2) (A)" and insert "(3) (A)".

✓ On page 14, line 1, strike out "(g)(1)(A)" and insert "(g) (1) (B)".

✓ On page 14, line 14, strike out all through line 22, and insert:

"(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--

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"(A) actual damages sustained by the individual

jurisdiction in the matters under the provisions of this subsection.

"(2) ^(A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed."

✓ On page 13, line 25, strike out "(2) (A)" and insert "(3) (A)". *Same as pg. 19*

✓ On page 14, line 1, strike out "(g)(1)(A)" and insert "(g) (1) (B)".

✓ On page 14, line 14, strike out all through line 22, and insert:

"(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of-- *28*

"(A) actual damages sustained by the individual as a result of the refusal or failure but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

ITEM--INFORMATION ON POLITICAL ACTIVITIES

On page 11, line 11, strike out line 11 and all that follows through line 18, and insert:

★ "(7) maintain no record describing how individuals exercise rights guaranteed by the first amendment unless expressly authorized by statute or by the individual about whom the record is maintained or in cases where such activities are inextricably intertwined with the commission of a crime prohibited by Federal law;"

(e) (7)

3.30 PM

ITEM--AGENCY RULES

On page 12, line 25, strike out "the" and all that follows through page 13, line 1, and insert "by which an individual may be able to".

ITEM--GOVERNMENT CONTRACTORS

On page 13, between lines 9 and 10, insert the following:

"(n) Government Contractors.--When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (g) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of the United States."

On page 21, line 9, strike out "(n)" and insert "(o)".

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CRIMINAL PENALTY

★ On page 15, lines 18 and 19, strike out "Any officer or employee" and insert "Any agent".

ITEM---SOCIAL SECURITY NUMBERS

On page 20, line 15, strike out all through page 21, line 2, and insert in lieu thereof the following:

"(m) (1) (A) MORATORIUM ON THE USE OF THE SOCIAL SECURITY ACCOUNT NUMBER.--It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(B) The provisions of subparagraph (A) ^{of this paragraph} shall not apply with respect to--

"(i) any disclosure which is required by Federal law, or

"(ii) any system of records in existence and operating before January 1, 1975.

"(2) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses will be made of it, and what rules of confidentiality will govern it."

ITEM--MAILING LISTS

On page 21, between lines 18 and 19, insert the following new subsection:

"(S) MAILING LISTS.--An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the confidentiality of names and addresses otherwise permitted to be made public."

Should be (S)

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add pg. 22 between lines 3 & 4

330 PM

[ITEM--REPORT ON NEW SYSTEMS]

Sec. 6. Each agency (as defined in section 552 (e) of title 5, United States Code) shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to acquire or alter any system of records or data bank in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the confidentiality of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

ITEM--OMB

Sec. 7. The Office of Management and Budget shall--

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of this section 552 (a) of title 5, United States Code, as added by section 3 of this Act; and

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

[ITEM--EFFECTIVE DATE]

Sec. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted.

[ITEM--AUTHORIZATION OF APPROPRIATIONS]

Sec. 9. There is authorized to be appropriated for fiscal years 1975, 1976, and 1977 the sum of \$1,500,000, except that not more than \$750,000 may be expended during any such fiscal year.

On page 22, line 1, strike out all through line 3, and insert the following:

Sec. 5. (a) (1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of nine members as follows:

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen from among members of the public at large who, by reason of their knowledge and expertise in any of the following areas: civil rights and liberties, law, social sciences, and computer technology, business, and State and local government, are well qualified for service on the Commission.

(2) The members of the Commission shall elect a Chairman from among themselves.

(3) Any vacancy in the membership of the Commission, as long as there are five members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of four members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them

as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(5) (A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(b) The Commission shall--

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or by voluntary adoption of such requirements and principles and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information;

(c) (1) In the course of conducting the study required under subsection (b) (1) of this section, and in its reports thereon, the Commission may, research, examine, and analyze--

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2)(A) The Commission may include in its examination personal information activities in the following areas: medical, insurance, education, employment and personnel, credit, banking and financial institutions, credit bureaus, the commercial reporting industry, cable television and other telecommunications media, travel, hotel, and entertainment reservations, and electronic check processing.

(B) The Commission may also include in its examination a study of--

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

(ii) whether the Internal Revenue Service should be prohibited from transferring individually identifiable

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a (g) (1) (C) or (D) of title 5, United States Code; and

(iv) whether the standards for security and confidentiality of records required under section 552e

(a) (10) of such title should be applied when a record is disclosed to a private person.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting such study, the Commission shall--

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) conduct a thorough examination of standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information;

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of major governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.

(d) In addition to its other functions the Commission may--

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon requests, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e) (1) (A) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpoena shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(B) In case of disobedience to a subpoena issued under subparagraph (A) of this paragraph, the Commission may invoke the aid of any district court of the United States in requiring compliance with such subpoena. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpoena issued by the Commission, issue an order requiring such person to appear and testify, to produce such books, records, papers, correspondence, and documents, and any failure to obey the order of the court shall be punished by the court as a contempt thereof.

(2) (A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any Federal agency or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided and upon completion of that purpose, such information shall be destroyed or returned to the agency or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to--

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(B) procure temporary and intermittent services

to the same extent as in the case of the

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized--

(A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(B) to enter into contracts or other arrangements or modifications thereof, with any government, any agency or department of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

(f) The members of the Commission shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission, and shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

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(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

(h) (A) Any officer or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be fined not more than \$5,000.

(B) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be fined not more than \$5,000.

On page 4, line 8, strike out "collection or" and
insert "item, collection, or".

NOTE: FEW ITEMS GET
TO COME.

(89)

SUGGESTED FLOOR LANGUAGE

The Congress recognized the sensitivity of records maintained by the Central Intelligence Agency and exempted CIA from most of the provisions of the Act. It is clear, therefore, that the Study Commission which this bill creates, in carrying out its statutory functions and powers, shall not impair the responsibility of the Director of Central Intelligence to protect intelligence sources and methods pursuant to the National Security Act of 1947.